

APPEAL NO. 030476
FILED MARCH 31, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 24, 2003. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) sustained a compensable injury on _____, and had disability from August 25 to October 31, 2002. The appellant (carrier) appealed the determinations arguing that no evidence supports these determinations or alternatively that the hearing officer's decision and order is against the overwhelming weight and preponderance of the evidence. The claimant responded, urging affirmance.

DECISION

Affirmed.

The claimant testified that he injured his back at work while pushing a treadmill onto a shelf as part of his job duties. It was undisputed that the claimant had a prior work-related back injury in 2001. The doctor who performed a needle EMG test noted in his consultation of November 11, 2002, that the EMG findings show clear acute new activity in an L5-S1 distribution, as well as the chronic changes from his previous L5-S1 radiculopathy approximately one year ago.

The disputed injury and disability issues in this case involved questions of fact for the hearing officer to decide. There was conflicting evidence presented on the disputed issues. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). When reviewing a hearing officer's decision for factual sufficiency of the evidence, we should reverse such decision only if it is so contrary to the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard, we find no grounds to reverse the factual findings of the hearing officer.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Elaine M. Chaney
Appeals Judge